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ABSTRACT

This paper discusses trends and issues surrounding undocumented students in the United States. War, hope, political difficulties, and economic troubles propel immigrants into the country. Estimates range from 100,000 to 500,000 undocumented immigrants entering annually, almost one-fifth of whom are under age 15. Many undocumented children attend public schools. Issues for educators include the right to education for undocumented children, the right of immigration officials to enter the classroom, and children in detention. State laws say all school-aged immigrants are required to attend school without regard to citizenship. However, some immigrant students must receive permission from immigration officials to attend school, and that permission can be withdrawn. Education rights are defined by the courts, federal education acts, and civil-rights legislation. Provisions of the Immigrant Reform and Control Act and the Transition Program for Refugee Children tie services to students' immigration status. Other federal programs do not. Court decisions also address detention center issues, language proficiency, equal educational opportunity, and educational access by undocumented migrant students. Schools are advised to be aware of students' rights and work toward an atmosphere that is hospitable to all immigrants. They are prohibited from discriminating against students based upon their immigration status or making inquiries that might expose that status. Recommendations for schools include staff training, preparation of information materials, and the development of policies dealing with victimization or harassment of immigrant students. The document also includes a legal bibliography, a table of applicable court cases, and 14 references. (TES)

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EDUCATING UNDOCUMENTED CHILDREN:

A REVIEW OF PRACTICES AND POLICIES

(A Trends and Issues Paper)

By

John Willshire Carrera

National Coalition of Advocates for Students
Boston, Massachusetts

U.S. DEPARTMENT OF EDUCATION
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Educating Undocumented Children: A Review of Practices and Policies (an ERIC/CRESS Trends and Issues Paper)

by

John Willshire Carrera

National Coalition of Advocates for Students
Boston, MA

ERIC Clearinghouse on Rural Education and Small Schools
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This publication deals with a controversial topic for which little information useful to educators now exists. As of June, 1989, the ERIC database contained a scant 114 resources identified by the descriptor "undocumented immigrants." Of these, only 9 deal substantively with the issue as it pertains to students in the nation's elementary and secondary schools. Indeed, one indication of how recent is this emerging issue is the fact that this descriptor "undocumented immigrants" was added to ERIC's controlled vocabulary in 1984. Educating Undocumented Children, therefore, is a much-needed addition to the literature.

ERIC/CRESS was fortunate to have the assistance of the National Coalition of Advocates for Students (NCAS) in the development of this trends and issues paper. Joan First, director of NCAS, was particularly helpful, both in defining the scope of the paper and arranging for authorship.

The author, John Willshire Carrera, is a lawyer who writes about legal issues in education and is himself an immigrant. He combines the knowledge of education and law needed to bring together the important trends and issues for the consideration of educators.

An earlier draft of this trends and issues paper was reviewed by Susan Voelkel, ERIC/CRESS abstractor/indexer; Sylvia Parker of the Mid-continent Regional Educational Laboratory; Therese Lipinski of the National Rural Development Institute; and an anonymous reviewer at the Office of Educational Research and Improvement, United States Department of Education. Jim Hunter revised the manuscript on the basis of reviewers' comments. Final revisions were carried out by the author. Craig Howley of ERIC/CRESS did the copyediting, and Pat Cahape, also of ERIC/CRESS, designed the cover.

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INTRODUCTION

Immigration into the United States by Asian, Hispanic, and Caribbean populations dramatically has increased since the 1960s. The influx includes not only legal immigrants, but also refugees and undocumented immigrants. This means, by current estimates, that as many as 2.6 million immigrant children are now part of American education systems, particularly those in major urban areas.

But as young immigrants contribute great energy and cultural richness to U. S. schools, they also bring new concerns. This is notably true of children of undocumented immigrants. Their problems are acute: they fear discovery and deportation; worry about detention and treatment in federally operated centers; and they dread investigation by the Immigration and Naturalization Service.

The Newest Immigrants

Immigration peaked during the 1970s, when figures may have been as high as 6.6 million. The composition of this newest migration is as far-reaching as its scale--in-coming populations from Mexico, Asia, Central and South America, and the Caribbean. Experts calculate recent migration to be one-third Latin American, one-third Asian, and one-sixth European, with the remainder from other continents, Canada, or unspecified nations (see, e.g., Muller & Espenshade, 1985).

Geographic Concentrations

According to the 1980 U.S. Census, documented immigrants mostly live in large cities in about ten populous states. The distribution of undocumented immigrants is more concentrated: 50% in California; 11% in New York; 9% in Texas; 7% in Illinois; 4% in Florida; and 19% in the

remaining 45 states. (Bureau of the Census, 1980; Haney, 1987; Passel, 1985).

Age Distribution

The average age of many immigrant populations is younger than the U.S. mean of 30. Undocumented immigrants are younger still. The 1980 U.S. Census of California showed one-third of Mexicans to be under the age of 15, and 57% under the age of 25. Forty-six percent of Nicaraguans and Salvadorans in the 1980 Census were younger than 25 (Bureau of the Census, 1980; Walker, 1987).

Linguistic Variety

Some newcomers have yet to be literate in any language. This is because of diverse languages or limited schooling in their native lands; the presence of a language only recently evolving into written form; or one that remains purely an oral tradition.

Many recent Asian immigrants are literate in English; 69% of Vietnamese; 44% of Lao; and 38% of Cambodians (Walker, 1987). A study of employed Latin American immigrants who arrived here between 1975 and 1980 showed that 60% of Mexicans and 75% of Central Americans have some use of English (Wallace, 1986).

Varying Levels of Education

With the exception of Mexicans, education levels of many new immigrants exceed those of previous migrations. Average high school graduation rates vary; Filipino, 81%; Haitian, 64%; Vietnamese, 61%; Jamaican, 58%; Central American, 24%; Dominican, 24%; Mexican, 13% (Bureau of the Census, 1980; Muller & Espenshade, 1985; Walker, 1987).

The 1980 Census found median years of education for Vietnamese immigrants to be 12.4, with 13 years for Koreans and 14.1 years for Filipinos.

COMING TO A NEW LAND

War, political oppression, economic struggle, and hope propel immigrant students to the U.S. They leave behind a life that indelibly shapes them.

The Trauma of Violence

Many recent immigrants come to this country from a native land torn by violence. Vietnam, Cambodia, and Laos have experienced decades of civil wars and protracted revolutions. El Salvador an Guatemala both are engaged in civil wars marked by terrorism and torture that affect neighboring Honduras and Costa Rica. In Haiti, a series of dictators have assumed power.

According to Oscar Chacon of the Comite El Salvador in Cambridge, Massachusetts: "There are countless...situations where children...were in the classroom where their teacher...was killed by armed people in different countries in Central America. And that is something that definitely affects [their] performance and overall ability to adapt into the school system" (First, Kellogg, Carrera, Lewis, & Almeida, 1988, p. 22). Los Angeles child psychiatrist Dr. William Arroyo reports:

> that children were directly victimized in the form of severe beatings, gunshot wounds, rape, and torture. Another [group] helplessly witnessed...an act of violence against other loved ones...Random shooting, skirmishes, aerial bombardments, and other war-related acts of violence were commonplace. (First et al., 1988, p. 22)

Fleeing such circumstances only brought more physical and psychological trauma to many immigrants. The escape of Vietnamese refugees by boat was often brutal. Among fleeing bombs and persecution, they had to cross the Mekong River to get to Thailand. For many southeast Asians, successful

escape from their homelands meant confinement in refugee camps for months or even years.

Family Separation

Haitian, Central American, southeast Asian, and Mexican families have come to the United States piecemeal. Memories of loved ones who remain at home, in refugee camps, or who did not survive escape journeys haunt some students. Dolores Sloan of the Community Counseling Service in Los Angeles notes:

> Most of the recent immigrants...need to develop new support systems. Confused by culture shock and traumatized by fear and economic struggle, many of them by war and violence, they are a high-risk population in terms of mental health and physical illness. (First et al., 1988, p. 22)

Depression, impaired memory, panic, severe insomnia, disorientation and confusion, war flashbacks, separation anxiety, family conflicts, isolation, and even suicide may beset immigrant children. Classrooms must appreciate such situations.

Ties to Home

Many immigrants now express hope that they will be able to return to their homelands some day. Continued identification with home, compounded by a belief in eventual reunification, helps determine how an immigrant views his or her life in the United States. Professor Miren Uriarte (personal communication, 1988) of the University of Massachusetts observes:

> While immigrants before 1970 chose to break ties and make new ones, for most of those flowing into the United States today, leaving home was especially traumatic and wrenching, involuntary and incomplete. Many left with the hope of someday returning. Consequently, their children often feel obligated to live in two cultures, translating one into the other for their parents. The children often carry an

> extra burden of being separated from family, friends, or a familiar culture without knowing why or having [had] any say in the decision to leave.

Learning English

Their native languages hold the identities of immigrant children. Nevertheless, families want to master the complex language of English. The style of English that must be learned for the classroom differs from the vernacular spoken by children to each other on the playground.

At home, only one-sixth of immigrant parents speak some English to their children; youngsters speak English to their parents only slightly more often (First et al., 1988). Public schools, then, are the primary source for learning English language skills.

Racial Tension

In contrast to earlier arrivals composed largely of Europeans and Scandinavians, current immigrants are predominantly Hispanic, Asian, and Caribbean. While they come to a country that is beginning to acknowledge its own increasing ethnic variety, immigrants frequently face racial tension--often for the first time in their lives.

A young Vietnamese girl who stressed the importance of learning English in order to survive in the United States added with shrewd insight, "It would help to be white" (First et al., 1988, p. 25).

Immigrants also experience racial strife with U.S.-born minority students. Cambodians and Puerto Ricans face off in school in Massachusetts; Haitians tangle with U.S.-born Blacks in Florida. In Philadelphia, Boston, and Los Angeles, youngsters of all nationalities argue and fight in school gyms--a common site for racial conflict.

It is important to note, however, that a survey of immigrant students (First et al., 1988) found the majority of students to be very concerned about fighting in school, and almost 70% reported having U.S.-born friends.

Economic Struggle

Most immigrant families arrive in the United States with few or no personal resources. They settle where they can afford housing, find work, and associate with other immigrants. This often means a poor, urban area. More recently arrived immigrants tend to come from more varied circumstances. Some are from the most privileged sector of their societies, while others have known only extreme poverty.

They arrive in the U. S. at a time when minorities, particularly women and children, move into poverty at an ever-increasing rate. According to government figures, more than 20% of all children in 1984 lived in poverty (Hodgkinson, 1985). Minority school-aged children are particularly vulnerable. Of children under 15 years of age below the poverty line, 48% are black and 39% are Hispanic (Bureau of the Census, 1983; 1984).

For immigrants, "education more than ever before is going to be the key to escaping from poorly paying, dead-end jobs," explains the labor economist Edward Taylor (First et al., 1988, p. 27). But the finances of many immigrants are further weakened by the need to support more than one household (most often in the land of origin). This kind of responsibility, and the job pressure that accompanies it, has detrimental effects on schooling.

Lack of adequate health care, moreover, is particularly acute for young immigrants. New York pediatrician Garth Alperstein describes some of the health risks these children face:

> The types of diseases prevalent in the countries from which these children come tend to be...malnutrition, anemia, dental cavities, communicable diseases, [a] very high incidence of parasites, tuberculosis, and untreated ear infections that have resulted in deafness... Some studies...suggest...there's a higher infant mortality rate amongst immigrant children than [in] the general population. (First et al., 1988, p. 29)

The Plight of Undocumented Children

Estimates vary as to the number of undocumented immigrants who have entered the United States since the 1960s. Conservative estimates set the annual influx during the 1970s and 1980s at 100,000 - 300,000 (Bureau of the Census, 1985; Haney, 1987). Others believe the actual figure was closer to 500,000. Estimates of the total undocumented population in the U. S. range from 2.5 - 12 million (Corwin, 1987; Haney, 1987; Lesko Associates, 1975, quoted in Passel, 1985).

Analysis of data collected by the Bureau of the U.S. Census in 1980 suggests that over 77% of undocumented immigrants come from Mexico and Latin America. Asia accounts for 10%, Europe for 9%, and the remaining 4% comes from various other nations (Chapman, 1975; Passel, 1985).

More than half of the undocumented population is male, and more than two-thirds is under the age of 30. Almost one-fifth is under the age of 15. Hundreds of thousands of undocumented children attend public schools (Haney, 1987; Passel, 1985).

SCHOOL ISSUES

The Right of Access

In its ruling in Plyler v Doe (1982), the U. S. Supreme Court extended the equal protection clause of the Fourteenth Amendment to anyone within a state, whether citizen or stranger, regardless of immigration status. The decision ended years of political controversy and litigation during which more than a thousand Texas school districts refused to enroll children who could not produce documentation of legal status.

The Court made its ultimate concern clear:

> The deprivation of education takes an inestimable toll on the social, economic, intellectual, and psychological well-being of the individual, and poses an obstacle to individual achievement. In determining the rationality of the Texas statute, its costs to the innocent children may properly be considered. (Plyler, 1982, at 203)

Since the ruling in Plyler, school personnel have become increasingly aware that the decision establishes the right of undocumented students to attend public schools.

Still, all obstacles may not have disappeared. According to attorney Peter Roos of the Multicultural Educational Training Advocacy Project: "One way or another, vigilante principals and people who are misinformed are asking kids for their papers and denying them access to schooling on the basis that they do not have them, or refuse to produce them" (First et al., 1988, p. 41).

In general, once community members or advocates confront a school system about such activity, access is established. Focus then shifts to the classroom. There, such concerns as testing, limited commands of English, grading, student groupings and divisions, proper staffs, discipline, and a high incidence of departure come into play.

INS in Public Schools

The U. S. Immigration and Naturalization Service (INS), which plays a major role in the protection of U. S. national borders, administers immigration laws to assist those who wish to immigrate to this country, or those already here who wish to remain.

In some extreme cases, INS personnel have entered classrooms in search of undocumented students, or detained them in hopes of identifying their parents as undocumented aliens when the adult immigrants arrive to retrieve them. Gilberto Cardenas of the Tomas River Center in San Diego describes the possible effects of these practices:

> You may have a child who's born in the United States, whose father is undocumented but the mother is here legally, born in the U. S. The INS apprehends the father, and the family moves. They're pulled out of school for six months and re-enter again. So, there is already a question of delayed education. And then, later on, they may permanently drop out of school because they may never be able to catch up. (First et al., 1988, p. 64)

Undocumented immigrants may well fear the Immigration and Naturalization Service. According to Florida attorney Cheryl Little:

> We had a case of a young girl who waited at Krone [a detention center] for 23 hours for a 15 minute hearing, and she finally was taken home at about 2:00 p.m. She called me the next morning to state that while she was being taken home, there was a female and a male INS guard. The male INS guard dropped the female guard off first, then took her home and on the way tried to ask her out to smoke or drink. She was very upset. That was an awful type of burden to put on a child and it was totally inappropriate.
>
> Most of our clients are fearful all the time. When they go to INS to have their work authorizations renewed, very often their papers are taken from them, and then they're left with no documents at all. Fear is a very real element. I'm sure that it will carry through to the school. (First et al., 1988, p. 33)

A Los Angeles attorney tells of a "recent incident where a 12-year-old boy was picked up riding his bicycle. That sent fear amongst parents, so kids aren't going to school" (First et al., 1988, p. 33).

Children in Detention

Immigrant children also fear detainment in an INS-sponsored detention center. During the past few years, the detention conditions for immigrant minors grew worrisome enough for the U. S. Department of Justice to acknowledge the scope of the problem:

> Significant numbers of minors have been entering the United States at various border point between the United States and Mexico. The largest concentration of entries are in the states of Texas and California. These minors come primarily from El Salvador, Nicaragua, Guatemala, and Honduras. When apprehended by federal authorities, these minors are taken to either an INS Contract Facility or a Border Patrol Facility. For the most part, these are adult detention facilities which are not appropriate environments for the detention of dependent minors. (Morales, 1987)

Conditions vary among facilities--some are operated directly by the INS, others are operated by private contracts with the INS, and still others are run by local governments. Recent court action (e.g., Flores v Meese, p. 20) has turned upon the following practices, procedures, or conditions in the facilities, which were documented in the Flores proceedings and in the work of First and colleagues (1988):

- commingling of children and unrelated adults;
- shared sleeping quarters with unrelated adults;
- commingling of unaccompanied young males with adult females;
- unaccompanied minor females of all ages house with adult women;
- children and adult sharing unpartitioned showers and toilets;
- absence of physical barriers to separate male and female sleeping quarters;
- use of arbitrary strip searches of minors;
- compulsory strip searches of minors upon admission, readmission, and after visits by family members of legal counsel;
- lack of any governing procedures where strip searches are administered;

- lack or total absence of recreation and exercise for minors;
- lack or total absence of qualified staff;
- prohibited or severely restricted visitation by family, friends, or legal counsel;
- lack of facilities designated for visiting.

These facilities, moreover, were found to offer inadequate educational services for detained young immigrants. With no comprehensive standards to govern provisions for such instruction, as late as 1987 many INS facilities offered none. In one sampling, most children aged 7 - 16 reported having attended school in the U. S. or in their native countries before detainment. But few facilities had any programs or materials to allow the students to continue their education there.

The effect of detainment on minors extends beyond the interruption of their education. Carol Raimondi of the Father Moriarity Central American Refugee Program in San Francisco observes:

> When these young people get arrested, they are stuck in a situation where they are alone. There are very few people among them who speak English. There are no educational opportunities. There is no reading material for them in any language, and many times they are commingled with unrelated adults, both male and female.
>
> This creates problems for these young people because, for the most part, they come here suffering from trauma of the situation in their home country, and then they are incarcerated--not because they have committed a crime--but only because they have come to enter this country, thinking what they will find is some freedom. (First et al., 1988, p. 35)

Stress arising from a period of detainment, given its often harsh surroundings and dearth of educational or recreational offerings, may produce lasting effects upon young people, according to Dr. William Arroyo:

> An environment such as a detention center can potentially delay the youngster's developmental progress. The lack of organized activities limits these young detainees' progress toward the improvement of their motor skills. Minimal formal instruction in

detention centers decreases the likelihood that a youngster will learn the fundamental educational skills that are normally acquired at this time and are essential for succeeding both in education and life in general.

The fact that the majority of youngsters have been separated from their families will obviously limit their success with respect to family. Some youngsters intermittently wondered if they would survive the ordeal of detention. The longer the period of time, the more likely he or she will develop various psychological symptoms. These may include irritability, depression, hopelessness, anger, anorexia, insomnia, anxiety, and social withdrawal. (First et al., 1988, p. 36)

LEGAL RIGHTS OF UNDOCUMENTED STUDENTS

The Plyler ruling held that states and public schools are prohibited from denying students, on the basis of their immigration status, access to a tuition-free public education through grade 12. The Court found that undocumented students have the same right to attend free public primary and secondary schools as do U. S. citizens and permanent residents. As such, states and the public schools are prohibited from enacting or adopting laws, regulations, or practices that deny or impede this right.

The Court also stipulated that states have little, if any, power to classify aliens. As a result, states and public schools are barred from adopting practices and regulations that discriminate against aliens where such practices and regulations have not been contemplated by the U. S. Congress.

By state law, all school-aged immigrants are required to attend primary and secondary schools until they reach a mandated age. States are obligated to enforce these laws without regard to U. S. citizenship or residency. Public schools and their personnel are prohibited from adopting policies, or taking action that might effect, the denial of the rights of access to resident immigrant students on the basis of their status. This includes undocumented students, who also cannot be denied access based on their undocumented status.

Given all this, school policy should insist that the primary responsibility of school personnel and educators is to provide all students in their community with a quality education. School personnel, who are under no legal obligation to act as immigration control officers, should

refrain from such activities. In the view of former New York City Public School Chancellor Nathan Quinones:

> We have to give a clear message that we are not arms of enforcing the law... We are not the enactors of it and we are not the agents of the federal government in carrying it out. (Willshire Carrera, 1989, p. 2)

Access to Schools

The Plyler right of access also extends to the application of state residency requirements. State residency requirements are deemed constitutional if they are properly defined, uniformly applied, and designed to further a substantial state interest. Under Plyler, the distinctions between undocumented persons, documented persons, and U. S. citizens do not translate into or amount to bona fide residency requirements. States and schools are therefore prohibited from denying undocumented students residency statuses on the basis of their immigration statuses.

Plyler should also be seen to extend to practices or requirements on the part of the public schools that act to "chill" these rights. For example, practices or requirements by public schools that could expose undocumented statuses or create a reasonable fear of their exposure might have the effect of limiting the right of access to schools. As a result, such practices or requirements are prohibited under Plyler.

Finally, in order for the Plyler right of access to be fully and properly enforced, it must be adhered to for all immigrant students. Any attempt to distinguish between documented or undocumented persons might well result in a denial of rights. Thus, the class of students protected by Plyler is deemed to include both documented and undocumented immigrant students residing in the United States.

The Supremacy Clause

The federal government's almost exclusive plenary power over immigration has long been established. In Toll v Moreno (1982), the U. S. Supreme Court held that any independent state regulations that discriminate against lawfully admitted aliens were preempted if such regulations imposed additional burdens not contemplated by Congress.

Congress has exercised its plenary power with regard to immigrant students who hold F-1 and M-1 visas and primary and secondary public schools. It mandates that F-1 and M-1 students receive advanced permission from the INS before they attend any school in this country.

F-1 and M-1 visas may be revoked by the INS should a student violate the terms of his or her status. The organization may also withdraw permission of attendance in the event that the school violates conditions of its relationship with the INS. As a result, F-1 and M-1 visa holders do not have a right of access to public schools in the U. S. as enjoyed by undocumented students, as well as by students on other non-immigrant visas.

The existence of the federal immigration power, however, does not preclude without exception state regulations that might affect immigrants. Although the Court held in Plyler that states had little if any power to classify immigrants, it also stated that:

> As we recognized in Decanas v Bica 424 U. S. 351 (1976), the States do have some authority to act with respect to illegal aliens, at least where such action mirrors federal objectives and furthers a legitimate goal. (Plyler at 225)

Language and Cultural Educational Rights

The legal mandate and funding for educational and remedial services for students of limited English proficiency (LEP) are provided by federal case

law, various state bilingual education laws, Title VII of the Elementary and Secondary Education Act to 1968, regulations of Title IV, and the Equal Educational Opportunities Act of 1974.

The denial of equal educational opportunities to LEP students is proscribed by federal case law, the Fourteenth Amendment to the Constitution of the United States, Lau v Nichols, Title VI of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act of 1974.

Rights as an LEP student. Under federal and state laws, limited English proficient (LEP) immigrant students, documented and undocumented, are entitled to the same cultural and language rights as citizens and permanent residents. An immigrant student's right to participate in a school's instructional programs cannot be denied or diminished based on his or her immigration status.

Title VI of the Civil Rights Act. According to this provision, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Under developing federal law, school districts have an affirmative obligation to take appropriate action to overcome language barriers that impede equal participation by its students in instructional programs.

In Lau v Nichols (1974) the Supreme Court ruled that schools have an affirmative obligation under Title VI to take action to rectify language barriers that have the effect of excluding LEP children from meaningful participation in educational programs:

> Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must

> already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. (Lau at 566)

Under EEOA. Section 1703(f) of the Equal Educational Opportunity Act stipulates that:

> No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex...national origin, [or] by...the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

Recent enforcement of federal language rights mainly is brought under 1703(f) regulations. The Fifth Circuit in Castaneda v Pickard developed standards with which to review 1703(f) actions and mandate remedies. These standards have been adopted by a number of other circuits as well. They set strong precedents for all jurisdictions.

The Ninth Circuit in Idaho Migrant Council v Board of Education (1981) also held that state education agencies have an affirmative obligation under 1703(f) to take appropriate action to overcome language barriers that impede equal participation by students in state public schools. The Seventh Circuit in Gomez v Illinois State Board of Education held further that 1703(f) places an affirmative obligation on both state and local educational agencies to provide equal education opportunities to their students. As well as adopting the Castaneda standards, the Court here held that the scope of this obligation "involved more than just issuing regulations that fail to provide local districts with adequate and uniform guidelines for identifying and placing LEP children in a transitional bilingual educational program" (Gomez at 1042). It also decided that monitoring and enforcement of the program chosen by the state's legislature must be included.

Title VII of the Bilingual Education Act. LEP immigrant students, documented and undocumented, who attend schools that receive funds under this Act are eligible for services under the Bilingual Education Act, as are all other LEP citizens and permanent resident students who attend the same public schools. Schools are prohibited from denying immigrant students, on the basis of their immigrant status, services provided for by this Act.

The Act provides funds for:

- planning and development of programs designed to benefit the educational needs of children of LEP parents in schools with many such students from below-$3000 households, or who are receiving payments under a program of aid to families with dependent children under a State plan approved under Title IV of the Social Security Act, including research projects, pilot projects designed to test the effectiveness of such plans;

- the development and dissemination of special instructional materials for use in bilingual education programs;

- providing pre-service training designed to prepare persons to work in bilingual education programs as teachers, teacher-aides, or other ancillary education personnel such as counselors, and in-service training and development programs designed to enable such persons to improve their qualifications while participating in such programs;

- the establishment, maintenance, and operation of programs designed to benefit low-income LEP households and their children, including bilingual education programs; programs designed to offer students a cultural-historical background of their first language; efforts to establish close cooperation between school and home; early childhood programs; adult education programs; dropout and anti-dropout programs; trade, vocational, or technical programs.

Funds granted under the Bilingual Education Act carry with them particular requirements and guidelines relevant to their use, and the operation of the services.

An application for Title VII grants must be developed in consultation with an advisory council, of which a majority shall be parents

and other representatives of the children the program will serve. The application must contain assurances that, after it has been approved, the applicant will provide for the continuing participation by the committee of parents, teachers, and other interested individuals. Where appropriate, parents are to be provided with translators and materials in their native languages.

Rights as At-Risk Students

Documented and documented at-risk immigrant students receive the same services to which citizen and permanent resident at-risk students are entitled under federal and state law. Schools and states are prohibited from denying immigrant students at-risk services and any instruction on the basis of their race, national origin, or alienage. Similarly, federal programs for at-risk students do not discriminate against a student on the basis of his or her immigration status. In Brown v Board of Education (1954), the Supreme Court clearly enunciated the principle that all children are entitled to equal educational opportunities. In Plyler it held schooling to be a semi-fundamental right for undocumented students. Any attempt to thwart these related general and particular decisions would be in violation of the Fourteenth Amendment's Equal Protection Clause. There, states and public schools are also barred from discriminating against students on the basis of their race, national origin, or alienage:

> The Supreme Court has long held that state and local governments are prohibited under the Equal Protection Clause of the Fourteenth Amendment from enacting classifications based on race, Brown v Board of Education, 347 U. S. 483 (1954), national origin, Korematsu v United States, 323 U. S. 214 (1944), or alienage, Graham v Richardson, 403 U. S. 365 (1971), which discriminate, deny benefits, or exclude from participation. Such classifications are deemed inherently suspect and require a compelling governmental interest to be found constitutional. This standard has been described as 'strict' in theory and 'fatal' in fact. (Gunther, 1972)

Emerging immigrant education program. State education agencies may apply for funds under this program to assist local school districts in the provision of supplemental educational services (English language instruction, other bilingual educational services, and special materials and supplies) and additional basic instructional services (classroom supplies, overhead costs, costs of construction, acquisition or rental of space, transportation costs, and essential inservice training for school personnel). As with the transitional program for refugee children (described in the following section), state education agencies are responsible for distributing these funds to local school districts.

FEDERAL LEGISLATION

This section briefly reviews the major federally legislated education programs through which schools enrolling undocumented immigrant students can receive financial support and guidance. Readers should note that only two programs--a provision of the Immigrant and Reform and Control Act and the Transition Program for Refugee Children--ties services to students' immigration status. The other programs reviewed here do not. In these programs, students must be served whatever their immigration status (i.e., documented or undocumented).

Programs Specifically for Immigrant Students

Three programs have been developed and funded specifically for different categories of immigrant students, the Emergency Immigrant Education Program and the Immigrant Reform and Control Act (IRCA), and the Transitional Program for Refugee Children.

Emergency Immigrant Education Program. This program was established in 1984, shortly after Plyler v Doe, in large part to provide states with assistance, since the states are required under Plyler to provide undocumented and other immigrant students with educational services. This program provides federal assistance to school districts that have at least 500 students who have arrived in the United States within the previous three years.

Immigrant Reform and Control Act. Section 204 of the IRCA, the State Legalization Impact Assistance Grants (SLIAG), allocates federal funds for each of four years beginning in FY 1988 to provide partial reimbursement to state and local governments for the costs of providing public assistance,

medical benefits, and educational services solely to immigrants newly legalized under the Act (Eligible Legalized Aliens, or ELAs). Since all newly legalized immigrants are in fact documented, however, these funds cannot be used to reimburse states for the costs of providing educational services to undocumented immigrant students.

Transitional Program for Refugee Children. This program provides funding to states for educational services to meet the needs of newly arrived refugee children in elementary and secondary schools. The term "refugee" is defined by various sections of the Immigration and Nationality Act and includes children who have been in the U. S. for less than four years and who have been (1) admitted into the country as a refugee, (2) granted the status of "asylee" while in the U.S., (3) allowed to remain in the country as a refugee, or (4) have been admitted into the country or paroled into the country as an Indochinese refugee.

State education agencies may apply for funds under this program to assist, under an approved state plan for the administration of refugee resettlement programs, local school districts in the provision of supplemental educational services (testing, bilingual education, remedial education, special materials and supplies) and support services (inservice training for school personnel, training for parents to enhance parent participation, school counseling and guidance services). State education agencies are then responsible for distributing these funds to local school districts.

Bilingual Education Act (Title VII of EEOA)

The Bilingual Education Act (Title VII of EEOA) provides services to limited English proficient (LEP) students. It funds state and local

education agencies for the provision of a variety of educational programs to such students attending public schools. It also provides funding for such other services as: training school personnel; technical assistance; preschool education; and supplementary community educational activities designed to facilitate and expand the work of bilingual programs in the schools.

All LEP students as defined by the act--including undocumented children--are eligible for the services funded under this Act. Eligibility for services is not related to a student's immigration status.

Programs for Disadvantaged and Special Needs Students

Four programs designed for other categories of economically disadvantaged children and children with special needs are relevant to the education of undocumented students. These include Chapter I of the Education Consolidation and Improvement Act (EICA), the Headstart Follow-Through Act, the National School Lunch and Breakfast programs, and the Education for All Handicapped Children Act (P.L. 94-142).

Chapter I of EICA. Chapter I of EICA is the largest federal aid program for elementary and secondary schools. Chapter I provides federal dollars to school districts to fund the salaries of teachers and classroom aids to work with children who are behind in school. Services under the Act are generally delivered to small groups of students either in their own classrooms or in special classrooms. Most Chapter I money is used to provide extra help in reading and math for elementary school students whose test scores show that they are not performing at or near the level of other children their age.

Chapter I funds can also be used for the following purposes: to purchase special materials and equipment for students in the program; train Chapter I and regular teachers to work more effectively with students in the program; and to train and promote parent participation in planning, carrying out, and evaluating Chapter I programs.

Chapter I funds are targeted to those schools with the highest concentration of children from low-income families. Funds are used to provide educational services to students most in need of extra educational help. Like eligibility for services to LEP students, eligibility for Chapter I services does not depend on a student's immigration status.

Headstart Follow-Through. Headstart provides for preschool education for economically disadvantaged children. All income- and age-eligible children, as defined by the Act, are eligible for Headstart services, regardless of their immigration status.

National School Lunch and Breakfast programs. Each of these programs provide children with a free, reduced-price, or full-price breakfast or lunch that provides a minimum of one-third of the daily Recommended Dietary Allowance. All children who are income-eligible qualify for a free or reduced-price meal, regardless of their immigration status. Applications for free and reduced-price meals are distributed at the beginning of the school year, but are available at any time from the school principal, food service director, or superintendent (depending on the school).

The application asks for the Social Security numbers of all household members above the age of 18. Household members who do not have a Social Security number--such as undocumented adults--should simply write

"none" on the application (Willshire Carrera, 1989; Wheeler, 1988). According to Wheeler,

> Parents should receive an application for the school breakfast or school lunch program at the beginning of the school year or whenever they transfer their child to a new school. Applicants may need to present some form of proof of current income. Though the application form asks for the Social Security numbers of all adult household members, if they do not have one they simply write 'none' in response to the question. (Wheeler, 1988, p. 18)

Education for All Handicapped Children Act. This Act, also referred to as P.L. 94-142, provides for federal aid to reimburse state and local education agencies for a portion of the additional costs of providing special education and related services to students in need of such services. The Act also mandates that any state or local education agency that receives funds under P.L. 94-142 must provide each handicapped child free public education in a program specifically designed to meet the child's individual needs. The Act mandates due process safeguards in evaluation, placement decisions, hearings, and appeals. The safeguards include procedures for maintaining the confidentiality of student records.

Under P.L. 94-142 the term "handicapped children" includes "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services" (20 U.S.C. Section 1401 [1]). States that receive funds under the Act are required to serve all handicapped children between the ages of 3 and 21. Again, students are eligible for such services without regard to their immigration status.

MAJOR JUDICIAL ACTIONS

Major Cases Affecting Undocumented Students

In addition to Plyler, which applied an intermediate level of review that elevated undocumented students to a semi-suspect class and found their right to schooling in this context to be a semi-fundamental right, cases include:

Flores v Meese. This case involved the rights of undocumented children in INS detention centers. In 1985 a class action suit was filed on behalf of hundreds of immigrant children being detained by the INS while in deportation proceedings.

In response to this suit, the INS settled on several of the plaintiffs' claims and agreed that by June of 1988, it would no longer hold children in regular INS institutions for more than 72 hours. Instead, it agreed to place children remaining in custody with licensed organizations, such as foster care homes. It also agreed to provide detained children with appropriate care and comprehensive child welfare services.

In 1988 District Court Judge Kelleher ordered the INS to release detained minors in deportation proceedings, who were otherwise eligible for release on bond, to a responsible non-relative adult when a parent or legal guardian was unable to come forward to claim custody (similar to treatment provided for under the appropriate regulations for minors in exclusion proceedings). The judge also ordered the INS to advise minors, promptly and in a language they understand, of any restrictions on their release. Additionally, the INS was ordered to give minors a hearing to determine probable cause for their arrest and the need for any restrictions placed

upon their release, regardless of whether or not they requested such a hearing.

Major Cases Affecting All Immigrant Students

Around the nation, three major cases have addressed issues surrounding the education of all immigrant students. Rulings that ensue from these cases apply to varying degrees to undocumented immigrant students as well as to legal immigrant students. All three of these cases were heard at the federal level; Toll v Moreno, by the U. S. Supreme Court.

Toll v Moreno. The case arose from a suit that challenged a state university's denial of "in-state" tuition to non-immigrant students. The U. S. Supreme Court ruled the university's policy invalid under the Supremacy Clause.

Basing its decision of De Canas v Bica the Court in 1982 found that because Congress, in the Immigration and Nationality Act of 1952, did not bar certain aliens from residing in the United States, the state's decision to deny "in-state" status to this same class of aliens, on the basis of their immigration status, amounted to a burden not contemplated by Congress.

Martinez v Blum. The Supreme Court found in this case that immigrant students, like all others, are bound by the constitutional residency requirements of the state in which they reside. In a suit challenging a Texas statute that denied tuition-free admission to certain minors, the Court held that the state statute created a bona fide residence requirement that did not violate the Equal Protection Clause of the Fourteenth Amendment.

The Court also held that:

- a bona fide residence requirement furthers a substantial state interest;
- such a requirement with respect to attendance in pubic schools does not violate the Fourteenth Amendment; and
- a bona fide resident requirement simply requires that the person establish residence before demanding the services that are restricted to residents.

Pena v Board of Education of City of Atlanta. In Pena, a local public school district required tuition for children of certain non-immigrants, including F-1 students, but not for all non-immigrants, such as children of diplomats or journalists, or for U. S. citizens whose residency in the school district was also temporary. A federal district court held the practice to violate the Fourteenth Amendment's Equal Protection Clause.

The Court also held that:

- aliens are protected by the Equal Protection Clause;
- because of the federal interest in controlling immigration policy, any state alienage classification that imposes a greater burden on aliens than Congress intended is invalid, and cannot be asserted as a compelling state interest, or as a rationale for classification;
- for a residency requirement to be bona fide, it uniformly must be applied and further a substantial state interest; and
- when a local school district required that tuition be paid for public school admission of the children of certain non-immigrants but not for all non-immigrants, the Constitution's Equal Protection Clause was violated.

Major Cases Affecting LEP Students

Four major court cases affect LEP students. These cases, too, apply in varying ways to undocumented students. All were heard at the federal level; Lau v Nichols, by the U.S. Supreme Court.

Lau v Nichols. This case began as a class action suit filed on behalf of Chinese-speaking children in the San Francisco schools. The Supreme Court eventually ruled that schools have an affirmative obligation to rectify language barriers that exclude children from meaningful participation in educational programs. After hearing evidence that about 1,800 Chinese-speaking children received no special assistance, the Court concluded that the school district was obligated to remove the language barrier in circumstances where instruction in English excluded LEP children from meaningful classroom participation.

Writing for the majority, Justice Douglas noted that:

> There is not equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. (Lau at 566)

The Court left open the exact nature of remedial action, to be determined instead by local school officials.

Castaneda v Pickard. The case involved a challenge to the bilingual program of a Texas school district. In its decision in 1981, the Fifth Circuit developed specific standards with which to review actions taken under Section 1703(f) of EEOA, and mandated certain remedies.

The Castaneda "Tripartite Test" runs as follows:

(1) The Court must examine evidence concerning the soundness of the challenged program. Its responsibility is to ascertain whether a school system pursues a program informed by an educational theory recognized as sound by some experts in the field.

(2) The Court should decide whether a school system's programs and practices are reasonably calculated to have the desired effect of the adopted theory.

(3) An affirmative determination that a school adopts a sound program and honestly tries to make it work does not end the

> court's inquiry. If a program fails to overcome classroom language barriers after a reasonable trial period, the program may no longer constitute remedial action.

Castaneda also explains the term "appropriate action," used by Congress in lieu of the term "bilingual education," to mean that lawmakers intended to give state and local educational authorities substantial latitude in choosing programs and techniques to meet their EEOA obligations. The Court in Castaneda, however, also stated that:

> Congress must also have intended to insure that schools made a genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students and deliberately placed on federal courts the difficult responsibility of determining whether that obligation had been met. (Castaneda at 1041)

The court also found that a school district has a "dual obligation": first, to develop a program to teach English; and, secondly, to assure that English-language deficiencies do not act as barriers to mastery of the school curriculum.

Idaho Migrant Council v Board of Education. Declaring that state and local education agencies have an obligation to provide equal educational opportunities to all students, the Ninth Circuit held in this case that state agencies must take action to overcome classroom language barriers. The Court found that:

- under the state constitution and laws, the state has the power to supervise local school districts, and require minimum standards of instruction;
- under federal law, the state must ensure that language deficiencies are addressed; and
- when considering a remedy, the court should consider the students' needs, programs already in place, and its compliance with federal standards.

Gomez v Illinois State Board of Education. Six years after Idaho Migrant Council, the Seventh Circuit concurred with the Ninth. The Court,

moreover, adopted the Castaneda test, and ordered the lower court to use it as a starting point for its consideration of the matter at hand in Illinois. The Court said that:

> the state school board and its superintendent are obviously not directly involved in the classroom education process. Thus, state educational agencies can only set general guidelines in establishing and assuring the implementation of the state's programs. That does not mean, however, that they have no obligations under the EEOA, for even those general measures must constitute appropriate action. (Gomez at 1042)

SCHOOL PRACTICES

The discussion in this section considers prohibited school practices, recommended school practices, and recommended actions for state and local education agencies. The first two sections focus on practices implemented by school personnel who work with undocumented students. These sections deal with such issues as collecting information and responding to federal requests for documentation. The third section considers policy issues.

Prohibited School Practices

During enrollment and at all other times, schools are prohibited from denying immigrant students admission on the basis of their undocumented status. Because any inquiries about a student's immigration status, or requests for documentation, might have the effect of exposing a student's undocumented status, such questions or requests are prohibited.

Prohibited school practices (Willshire Carrera, 1989) include:

- barring access to a student on the basis of undocumented status or alleged undocumented status;
- treating one student differently from others in order to determine residency, or on the basis of undocumented status;
- inquiring about a student's immigration status or requesting documentation at any time;
- making inquiries from a student or a parent that might expose the undocumented status of the student or the parent;
- requiring Social Security numbers that will have the effect of exposing immigration status of undocumented students or their parents.

In general, any inquiry that might expose the undocumented status of a student and force him or her to go underground, under the real or perceived fear of detention and apprehension, amounts to a denial of Plyler rights, and may subject the school system in question to liability.

Social Security numbers. Undocumented immigrants are not assigned Social Security numbers, nor are they eligible for them. If districts insist on identifying students in this manner, students without Social Security numbers should be given a number generated by the school (Willshire Carrera, 1989). But any school that requires Social Security numbers as a precondition for admission is, in fact, denying undocuments their rights of access, and is in direct violation of Plyler.

Accordingly, schools should refrain from requiring students to apply for numbers. Should schools decide to pass out Social Security registration forms to assist the Social Security Administration, schools must inform students and their parents, in appropriate languages, that they distribute the forms solely as a service to parents who wish to claim their children as dependents for tax purposes. Furthermore, schools should emphasize that filing these applications is the responsibility of parents and students. Schools should in no way monitor any filing that might result.

Incorrectly collected information. Should a school discover information about the immigration status of a student or parent, it is prohibited, under the Family Educational Rights and Privacy Act (and under most state Acts) from providing such information to any agency, including the INS, without permission from the student's parents, or a court order.

INS and the schools. Any cooperation between a school and the INS, or any surveillance and policing activities conducted by INS on or near schools, will most probably have the effect of impeding the right of access of undocumented students. Therefore, any activities of this type are unconstitutional under Plyler.

School personnel should be prohibited from cooperating with INS in any manner that jeopardizes immigrant students' Plyler rights. Any request by the INS to obtain information concerning specific students (with the exception of the administration of F-1 and J-1 visas), to determine if undocumented students are attending a school, or to seize a student, should be recorded and communicated to the school principal. He or she should in turn request to see a valid subpoena or legal warrant, without which the request should be firmly denied. Should a valid subpoena or legal warrant be presented, the principal should immediately inform the school superintendent of the request and contact an attorney for advice (see Willshire Carrera, 1989, for details).

Any communication with the INS initiated by a school or its officials concerning a specific student also should be prohibited (Willshire Carrera, 1989). The communication may have the effect of denying a student's Plyler rights, or the right of access of other undocumented students in the district. Any communication without the consent of a student's parents also will result in violation.

Recommended School Practices

Fear of discovery and deportation has a profound effect on the daily lives of undocumented students. Crossing the Schoolhouse Border: Immigrant Students and the California Public Schools, a report issued by California Tomorrow, describes their states of mind:

> For children, being here illegally brings increased instability, fear and insecurity to their lives. It also means living without protection, social services and assistance available to most people in this country. We found high correlations between undocumented status and dropping out or never enrolling in school, with interference with schoolwork, as well as with physical and mental health problems. Also, undocumented children are more likely than

> other immigrants to move frequently, hampering their attachment and achievement in school. (Olsen & Chen, 1988, p. 27)

As such, schools should move beyond adopting practices that give undocumented students constitutional access to education; schools actively should engender confidence and trust in such students. Principals and other personnel should be:

- aware of and committed to the provision of Plyler rights;
- committed to establishing an atmosphere that is open and hospitable to all immigrant students; free from fear of detention and deportation; free of victimization, harassment, and intergroup conflict;
- aware of the precariousness of immigrants' daily lives;
- willing to provide counseling and guidance that is culturally and linguistically appropriate;
- committed to good classroom assessment and placement;
- ready to restructure policies or practices that might impede immigrant students' access to effective instruction, and sensitive to policies that have the effect of sorting them into programs that prepare them for substandard futures;
- respectful of immigrant communities' native languages and cultures, but committed to those services necessary to ensure that all immigrant students learn English well;
- committed, through both hiring and retraining, to competent staffs;
- committed to developing strong working relationships with immigrant families.

Staff training. Maintaining competent staffs to work with undocumented students implies the need for systematic and on-going training that addresses the following issues:

- the history of immigration to the U. S.
- the history and cultural backgrounds of immigrant communities in the particular school district;

- the implications of being an undocumented immigrant in the U. S. right now, particularly for communities who flee persecution and seek safe haven;
- Plyler rights;
- LEP student rights;
- the crucial role of staffs;
- the importance of good relationships between immigrant parents and schools.

Schools should provide training as well to guidance counselors and to front-line staff about the rights of immigrants and the benefits and services available to them under the law.

Quashing rumors. Undocumented students and their families often live in fear of being discovered; often they do not have the time, or the access to proper authorities, to verify rumors about threatening procedures or situations. Therefore, schools should take affirmative measures to quash unfounded rumors in a timely way and with cultural sensitivity. Misinformation should be dispersed or corrected. Plyler rights should be conveyed to students and parents either by the school principal or by a community liaison in command of the appropriate languages, or both.

Federal requests for documentation. The Emergency Immigrant Education Program, Section 204 of the Immigrant Reform and Control Act, and the Transitional Program for Refugee Children all provide some schools with supplemental federal funding for educational services to immigrant students.

Schools are required by each program to document the eligibility of students who receive services under the programs. Relevant schools are not, however, required to check or document the immigration status of each

student, or of students who would appear to be eligible to receive such services. The regulations are clear in the following areas:

- alien registration numbers are neither required nor solicited;
- documentation of immigration status is neither required nor solicited;
- student eligibility may be based on credible information from any source, including previous school records, however any documentary evidence to establish eligibility is not required;
- the Emergency Student Program requires documentation of a student's country of origin, and when he or she first entered school;
- the Transitional Program requires documentation that a student meets the Refugee Act of 1980's definition of refugee status and documentation of his or her country of origin and date of arrival.

In the past, schools occasionally may have requested information in ways that may have impeded undocumented students' Plyler rights. Schools must vigilantly refrain from making such requests. Schools should inform all parents and students that schools receive funds under these programs. Eligible or possibly eligible children, who should be encouraged to come forward to avail themselves of such services on their own, should be guaranteed confidentiality in supplying necessary information.

Recommended Actions for State and Local Education Agencies

To promote immigrant students' guaranteed access to public schools, state and local education agencies should (Willshire Carrera, 1989):

- fully brief all personnel on the rights of immigrant students;
- adhere to strict policies that would forbid any person or agency from entering schools, or collaborating with personnel, in ways that might infringe upon the rights of immigrant children;
- prepare and distribute materials, written in the appropriate native languages, that explain to immigrant families their rights and that outline procedures for enrollment, including the fact

that it is illegal to request information about immigration status;

- establish school atmospheres that are open and hospitable to immigrant students;
- train personnel, making them sensitive to possible harassment or victimization of immigrant students by others;
- develop policies that clearly state that such harassment or victimization is unacceptable and prohibited;
- develop curriculum, school practices, and a multicultural staff that will promote the success of immigrant students;
- encourage the involvement of immigrant parents, community-based self-help organizations, and advocates in the daily education of immigrant students.

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APPENDIX B: TABLE OF CASES

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